

## Article 2A.

### Transparency in Third-Party Contracting by Attorney General.

#### **§ 114-9.2. Title.**

This Article shall be known and may be cited as the "Transparency in Private Attorney Contracts Act (TIPAC)." (2014-110, s. 1.1.)

#### **§ 114-9.3. Definitions.**

The following definitions apply in this Article:

- (1) Contingency fee contract. – A contract entered into by a State agency to retain private counsel that contains a contingency fee arrangement, including, but not limited to, pure contingency fee agreements and hybrid agreements, including a contingency fee aspect.
- (2) Government attorney. – An attorney employed by the State as a staff attorney in a State agency.
- (3) Private attorney. – An attorney in private practice or employed by a private law firm.
- (4) State. – The State of North Carolina, including State officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of State government and any of its agents.
- (5) State agency. – Every agency, institution, department, bureau, board, or commission of the State of North Carolina authorized by law to retain private counsel. (2014-110, s. 1.1.)

#### **§ 114-9.4. Procurement.**

(a) A State agency may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into the contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

- (1) Whether there exist sufficient and appropriate legal and financial resources within the Attorney General's office to handle the matter.
- (2) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.
- (3) The geographic area where the attorney services are to be provided.
- (4) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

(b) If the Attorney General makes the determination described in subsection (a) of this section, the Attorney General shall request proposals from private attorneys to represent the State agency on a contingency fee basis and draft a written request for proposals from private attorneys, unless the Attorney General determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing. A request for proposals under this provision is not subject to Article 3 of Chapter 143 of the General Statutes. Until the

conclusion of the legal proceeding or other matter for which the services of the private attorney were sought, all proposals received shall be maintained by the Attorney General and shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes. All proposals maintained under this subsection shall be made available to the State Auditor for oversight purposes, upon request.

(c) A private attorney who submits a proposal under this section shall simultaneously pay a fee in the amount of fifty dollars (\$50.00). All fees collected under this subsection shall be used for the maintenance of the Attorney General's Web site. (2014-110, s. 1.1.)

#### **§ 114-9.5. Contingency Fees.**

(a) The Attorney General may not give permission under G.S. 114-2.3 for a State agency to enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee, exclusive of reasonable costs and expenses, in excess of:

- (1) Twenty-five percent (25%) of any damages up to ten million dollars (\$10,000,000); plus
- (2) Twenty percent (20%) of any portion of such damages between ten million dollars (\$10,000,000) and fifteen million dollars (\$15,000,000); plus
- (3) Fifteen percent (15%) of any portion of such damages between fifteen million dollars (\$15,000,000) and twenty million dollars (\$20,000,000); plus
- (4) Ten percent (10%) of any portion of such damages between twenty million dollars (\$20,000,000) and twenty-five million dollars (\$25,000,000); plus
- (5) Five percent (5%) of any portion of such damages exceeding twenty-five million dollars (\$25,000,000).

(b) In no event shall the aggregate contingency fee exceed fifty million dollars (\$50,000,000), exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(c) A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines. (2014-110, s. 1.1.)

#### **§ 114-9.6. Control.**

(a) Decisions regarding disposition of the case are reserved exclusively to the discretion of the State agency in consultation with a government attorney.

(b) The Attorney General shall develop a standard addendum to every contract for contingency fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the State agency, including, without limitation, the requirement listed in subsection (a) of this section. (2014-110, s. 1.1.)

#### **§ 114-9.7. Oversight.**

(a) Until the conclusion of the legal proceeding or other matter for which the services of the private attorney have been retained, the executed contingency fee contract and the Attorney General's written determination pursuant to G.S. 114-9.4 shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes. All records maintained under this subsection shall be made available to the State Auditor for oversight purposes, upon request.

(b) The amount of any payment of contingency fees pursuant to a contingency fee contract subject to this Article shall be posted on the Attorney General's Web site within 15 days after the

payment of those contingency fees to the private attorney and shall remain posted on the Web site for at least 365 days thereafter.

(c) Any private attorney under contract to provide services to a State agency on a contingency fee basis shall maintain all records related to the contract in accordance with the Revised North Carolina Rules of Professional Conduct.

(d) By February 1 of each year following a year in which a State agency entered into a contingency fee contract with a private attorney, the Attorney General shall submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year. To the fullest extent possible without waiving the evidentiary privileges of the State in any pending matters, the report shall:

- (1) Identify each new contingency fee contract entered into during the year and each previously executed contingency fee contract that remains current during any part of the year.
- (2) Include the name of the private attorney with whom the department has contracted in each instance, including the name of the attorney's law firm.
- (3) Describe the nature and status of the legal matter that is the subject of each contract.
- (4) Provide the name of the parties to each legal matter.
- (5) Disclose the amount of recovery.
- (6) Disclose the amount of any contingency fee paid.
- (7) Include copies of any written determinations made under G.S. 114-9.4. (2014-110, s. 1.1.)

**§ 114-9.8. No expansion of authority.**

Nothing in this Article shall be construed to expand the authority of any State agency or officer or employee of this State to enter into contracts for legal representation where no authority previously existed. (2014-110, s. 1.1.)